

By: Shapleigh

S.B. No. 1368

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a county ethics commission in certain counties; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Local Government Code, is amended by adding Chapter 161 to read as follows:

CHAPTER 161. COUNTY ETHICS COMMISSION IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. APPLICABILITY OF CHAPTER. This chapter applies only to a county with a population of 650,000 or more that is located on the international border.

Sec. 161.002. DEFINITIONS. In this chapter:

(1) "Commission" means a county ethics commission created under this chapter.

(2) "Commission staff" means county employees assigned to provide administrative support to the commission.

(3) "Communicates directly with" has the meaning assigned by Section 305.002, Government Code.

(4) "County affiliate" means a person so described and determined by order of the commissioners court on recommendation of the commission. As determined by the commissioners court, the term includes:

(A) any person whose goods and services are purchased under the terms of a purchase order or contractual

1 agreement with the county; and

2 (B) as determined by the county, any other  
3 persons doing business with the county.

4 (5) "County employee" means a person employed by the  
5 county or a county officer and includes a person employed in the  
6 judicial branch of the county government who is not subject to the  
7 Code of Judicial Conduct. The term does not include a county  
8 officer.

9 (6) "County office" means a position held by a county  
10 officer.

11 (7) "County officer" means a county judge, county  
12 commissioner, county attorney, sheriff, county tax  
13 assessor-collector, county clerk, district clerk, county  
14 treasurer, county auditor, county purchasing agent, and constable.

15 (8) "County public servant" means a person elected,  
16 selected, appointed, employed, or otherwise designated as one of  
17 the following, even if the person has not yet qualified for or  
18 assumed the duties of office:

19 (A) a county officer or county employee;

20 (B) a person appointed by the commissioners court  
21 or a county officer to a position on one of the following, whether  
22 the position is compensated or not:

23 (i) an authority, board, bureau,  
24 commission, committee, council, department, district, division, or  
25 office of the county; or

26 (ii) a multi-jurisdictional board;

27 (C) an attorney-at-law or notary public when

1 participating in the performance of a governmental function;

2 (D) a candidate for nomination or election to an  
3 elected county office; or

4 (E) a person who is performing a governmental  
5 function under a claim of right although the person is not legally  
6 qualified or authorized to do so.

7 (9) "Lobbyist" means a person who, for compensation in  
8 excess of an amount established by the commission, communicates  
9 directly with a county officer or county employee to influence  
10 official action.

11 [Sections 161.003-161.050 reserved for expansion]

12 SUBCHAPTER B. CREATION OF COMMISSION; APPOINTMENT OF COMMISSION

13 MEMBERS

14 Sec. 161.051. CREATION OF COMMISSION BY ORDER. (a) The  
15 commissioners court of a county, by an order adopted by a majority  
16 of the court's full membership, may create a county ethics  
17 commission.

18 (b) A copy of an order adopted under this section shall be  
19 placed in the minutes of the court's proceedings. The copy of the  
20 order is public information.

21 Sec. 161.052. CREATION OF COMMISSION BY ELECTION. (a) A  
22 county ethics commission may be created by approval of the system by  
23 a majority of the qualified voters of the county voting at an  
24 election called for that purpose.

25 (b) The commissioners court by order may call an election on  
26 the question of the creation of a county ethics commission.

27 (c) The commissioners court shall hold the election called

1 under this section on the first authorized uniform election date  
2 prescribed by Chapter 41, Election Code, that allows sufficient  
3 time for publication of the notice required by Subsection (d) and  
4 for compliance with any other requirements established by law.

5 (d) In addition to the notice required by Chapter 4,  
6 Election Code, the commissioners court must publish in a newspaper  
7 of general circulation in the county, and on the home page of the  
8 county's Internet website, a substantial copy of the order calling  
9 the election. The first newspaper publication must be made on or  
10 before the 15th day before the date of the election and continue  
11 once a week for two consecutive weeks, and the notice on the  
12 county's Internet website shall remain on the home page each day  
13 beginning not later than the 16th day before the election and ending  
14 on the date of the election.

15 Sec. 161.053. BALLOT. The commissioners court shall order  
16 the ballot at the election to be printed to provide for voting for  
17 or against the proposition: "Creation of a county ethics  
18 commission."

19 Sec. 161.054. RESULT OF ELECTION. If the proposition is  
20 approved, the commissioners court shall declare the result and by  
21 order create the county ethics commission. A copy of the order  
22 creating the commission shall be placed in the minutes of the  
23 court's proceedings.

24 Sec. 161.055. APPOINTMENT OF COMMISSION. (a) The  
25 commission is composed of:

26 (1) five members, each of whom is appointed by the  
27 county judge or a county commissioner; and

1           (2) four public representative members, appointed as  
2 provided by this section.

3           (b) Not later than the 60th day after the date of the order  
4 creating the commission as provided in Section 161.051 or Section  
5 161.054:

6           (1) the county judge and each county commissioner  
7 shall each appoint one member of the commission; and

8           (2) the commissioners court shall order publication of  
9 a notice seeking applicants for four public representative members  
10 of the commission.

11           (c) The commissioners court shall set the date for the first  
12 meeting of the initial members appointed by the county judge and the  
13 commissioners court. The first meeting must be set not earlier than  
14 the 60th day after the date of the order creating the commission and  
15 not later than the 90th day after the date of that order.

16           (d) At the first meeting of the commission, the initial  
17 members shall elect one member as chair of the commission.

18           (e) Not later than the 120th day after the date of the order  
19 creating the commission, the initial members shall appoint four  
20 public representatives from the applications received pursuant to  
21 Subsection (b)(2). After the initial public representatives are  
22 appointed, the entire board shall appoint the successor public  
23 representatives.

24           Sec. 161.056. ELIGIBILITY. (a) To be eligible for  
25 appointment to the commission, a person must:

26           (1) be at least 25 years old; and

27           (2) have resided in the county for the two years

1 immediately preceding the date on which the person's term will  
2 begin.

3 (b) A person is not eligible for appointment to the  
4 commission if the person is:

5 (1) an elected officer;

6 (2) a county employee;

7 (3) a county affiliate;

8 (4) a person employed as a lobbyist;

9 (5) a person convicted of a misdemeanor involving  
10 moral turpitude or a felony; or

11 (6) a person who is delinquent in payment of local,  
12 state, or federal taxes.

13 Sec. 161.057. TERMS. (a) Members of the commission serve  
14 staggered terms of two years, with the terms of four or five members  
15 expiring each year.

16 (b) Notwithstanding Subsection (a), the initial members of  
17 the commission shall select by lot five members to serve a term of  
18 two years and four members to serve a term of one year.

19 Sec. 161.058. VACANCIES. (a) A vacancy on the commission  
20 shall be filled for the remainder of the unexpired term as follows:

21 (1) if the vacancy represents a member appointed by  
22 the county judge or a county commissioner, the vacancy is filled,  
23 except as provided by Subsection (b), by appointment of that  
24 officer or the officer's successor-in-office; or

25 (2) if the vacancy represents a public representative  
26 member, by the commission.

27 (b) If the county judge or county commissioner, as

1 applicable, does not fill the vacancy before the 60th day after the  
2 date the position becomes vacant, the commission may fill the  
3 vacancy by a majority vote of the remaining members.

4 Sec. 161.059. MEETINGS. (a) The commission shall meet on  
5 a regular basis.

6 (b) The commission is a governmental body for purposes of  
7 Chapter 551, Government Code.

8 Sec. 161.060. REMOVAL OF COMMISSION MEMBER. A member of the  
9 commission may be removed as provided by Chapter 87 if, after a  
10 trial, the jury finds good cause for removal, including:

11 (1) failure to pay local, state, or federal taxes when  
12 due;

13 (2) violation of the ethics code adopted by the  
14 commission;

15 (3) conviction of a felony or misdemeanor;

16 (4) excessive absenteeism as determined by the  
17 commission; and

18 (5) official misconduct.

19 Sec. 161.061. LEGAL REPRESENTATION. The county attorney,  
20 district attorney, or criminal district attorney, as appropriate,  
21 with the duty to represent the county in civil matters shall  
22 represent the commission in all legal matters.

23 [Sections 161.062-161.100 reserved for expansion]

24 SUBCHAPTER C. POWERS

25 Sec. 161.101. GENERAL POWERS. (a) The commission shall  
26 adopt, publish, and enforce an ethics code governing county public  
27 servants.

1       (b) The commission may adopt or use as a guide any ethics law  
2 or rule of the United States, this state, or a political subdivision  
3 in this state to the extent that the law or rule promotes the  
4 purposes of this chapter and serves the needs of the county.

5       (c) The commission may adopt bylaws, rules, forms,  
6 policies, or procedures to assist in the administration of the  
7 commission's duties under this chapter. The commission may be  
8 guided by Robert's Rules of Order to the extent that it does not  
9 conflict with the constitution and laws of the United States and  
10 this state or conflict with other guidelines adopted by the  
11 commission.

12       (d) The commission shall be assigned staff by the county and  
13 provided access to county resources to assist in its duties.

14       (e) The commission shall develop and implement polices that  
15 provide the public with information on the commission and the  
16 ethics code.

17       (f) The commission may adopt or use as a guide the  
18 provisions of Subchapter D or E.

19       (g) The commission shall enforce the provisions of the  
20 ethics code by issuing appropriate orders or recommendations or by  
21 imposing appropriate penalties.

22       Sec. 161.102. ADVISORY OPINIONS. On its own initiative or  
23 on the request of any person covered by the ethics code adopted by  
24 the commission, the commission may issue a written ethics advisory  
25 opinion regarding the application of the ethics code to a specified  
26 existing or hypothetical factual situation. The commission may not  
27 issue an opinion that includes the name of any person who may be



1 affected by the opinion. If made at the request of a person covered  
2 by the ethics code, the name of that person shall be deemed  
3 confidential.

4 Sec. 161.103. PUBLIC INTEREST INFORMATION. (a) The  
5 commission shall develop plain-language materials as described by  
6 this section. The commission shall post the information on the  
7 county's Internet website and make the information otherwise  
8 available to the public.

9 (b) The materials must include:

10 (1) a description of:

11 (A) the commission's responsibilities;

12 (B) the types of conduct that constitute a  
13 violation of the ethics code adopted by the commission;

14 (C) the types of sanctions the commission may  
15 impose;

16 (D) the commission's policies and procedures  
17 relating to complaint investigation and resolution; and

18 (E) the duties of a person filing a complaint  
19 with the commission; and

20 (2) a diagram showing the basic steps in the  
21 commission's procedures relating to complaint investigation and  
22 resolution.

23 (c) The commission shall provide the materials described by  
24 this section to each complainant and respondent.

25 (d) The commission shall adopt a policy to effectively  
26 distribute materials as required by this section.

27 Sec. 161.104. COMMISSION MEMBER EDUCATION AND TRAINING.

1 (a) Not later than the 60th day after the date a person is  
2 appointed to the commission, the person must complete training on  
3 the following matters:

4 (1) the legislation that created the commission;

5 (2) the role and functions of the commission; and

6 (3) the requirements of:

7 (A) the open meetings law, Chapter 551,  
8 Government Code;

9 (B) the public information law, Chapter 552,  
10 Government Code; and

11 (C) other laws relating to public officials,  
12 including conflict-of-interest laws.

13 (b) A member of the commission must complete subsequent  
14 training programs on the following matters:

15 (1) the ethics code adopted by the commission; and

16 (2) the procedural rules adopted by the commission.

17 (c) Other than the initial appointees and public  
18 representatives, a person who is appointed to and qualifies for  
19 office as a member of the commission may not vote, deliberate, or be  
20 counted as a member in attendance at a meeting of the commission  
21 until the person completes a training program that complies with  
22 this section.

23 Sec. 161.105. EDUCATION AND TRAINING FOR PERSONS COVERED BY  
24 ETHICS CODE. (a) The commission and commission staff shall  
25 provide periodic training for persons covered by the ethics code  
26 adopted by the commission on at least a quarterly basis.

27 (b) The training program must provide information

1 regarding:

2 (1) the ethics code;

3 (2) the role and functions of the commission; and

4 (3) plain-language materials as further described by  
5 Section 161.103.

6 (c) In addition to the qualifications under Subchapter C,  
7 Chapter 262, before submitting a bid, responding to a request for  
8 qualifications or proposals, or otherwise contracting with the  
9 county, an officer, principal, or other person with the authority  
10 to bind the vendor shall complete training on the ethics code.

11 (d) A lobbyist intending to meet with a person covered by  
12 the ethics code shall complete training on the ethics code.

13 [Sections 161.106-161.150 reserved for expansion]

14 SUBCHAPTER D. COMPLAINT PROCEDURES AND HEARINGS

15 Sec. 161.151. DEFINITIONS. In this subchapter:

16 (1) "Category One violation" means a violation of the  
17 ethics code adopted by the commission as to which it is generally  
18 not difficult to ascertain whether the violation occurred or did  
19 not occur, including:

20 (A) the failure by a person required to file a  
21 statement or report required under the ethics code to:

22 (i) file the statement or report in a manner  
23 that complies with applicable requirements; or

24 (ii) file the statement or report in a  
25 timely manner;

26 (B) a misrepresentation in a report required  
27 under the ethics code; or

1           (C) a failure to respond in a timely manner to a  
2 written notice under Section 161.156(b).

3           (2) "Category Two violation" means a violation of the  
4 ethics code adopted by the commission that is not a Category One  
5 violation.

6           Sec. 161.152. COMPLAINT PROCEDURES AND HEARINGS. The  
7 commission may adopt the complaint procedures and hearings set  
8 forth in this subchapter.

9           Sec. 161.153. HEARINGS AND SETTLEMENT. (a) The commission  
10 may:

11           (1) hold hearings, on its own motion adopted by an  
12 affirmative vote of at least six commission members or on a sworn  
13 complaint, and render decisions on complaints or reports of  
14 violations as provided by this chapter; and

15           (2) agree to the settlement of issues.

16           (b) The commission may not consider a complaint or vote to  
17 investigate a matter outside the commission's jurisdiction.

18           Sec. 161.154. CATEGORIZATION OF VIOLATIONS. An allegation  
19 of a violation listed as a Category One violation shall be treated  
20 as a Category Two violation if the commission at any time determines  
21 that:

22           (1) the allegation arises out of the same set of facts  
23 as those that give rise to an allegation of a Category Two  
24 violation, and the interests of justice or efficiency require  
25 resolution of the allegations together; or

26           (2) the facts and law related to a particular  
27 allegation or a defense to the allegation present a level of

1 complexity that prevents resolution through the preliminary review  
2 procedures for Category One violations prescribed by Section  
3 161.159(a).

4 Sec. 161.155. FILING OF COMPLAINT; CONTENTS. (a) An  
5 individual may file with the commission a sworn complaint, on a form  
6 prescribed by the commission, alleging that a person subject to the  
7 ethics code has violated the ethics code. The commission shall make  
8 the complaint form available on the county website.

9 (b) A complaint filed under this section must be in writing  
10 and under oath and must set forth in simple, concise, and direct  
11 statements:

12 (1) the name of the complainant;

13 (2) the street or mailing address of the complainant;

14 (3) the name of each respondent;

15 (4) the position or title of each respondent;

16 (5) the nature of the alleged violation, including if  
17 possible the specific rule or provision of the ethics code alleged  
18 to have been violated;

19 (6) a statement of the facts constituting the alleged  
20 violation and the dates on which or period of time in which the  
21 alleged violation occurred; and

22 (7) all documents or other material available to the  
23 complainant that are relevant to the allegation, a list of all  
24 documents or other material within the knowledge of the complainant  
25 and available to the complainant that are relevant to the  
26 allegation but that are not in the possession of the complainant,  
27 including the location of the documents, if known, and a list of all

1 documents or other material within the knowledge of the complainant  
2 that are unavailable to the complainant and that are relevant to the  
3 complaint, including the location of the documents, if known.

4 (c) The complaint must be accompanied by an affidavit  
5 stating either that the information contained in the complaint is  
6 correct or that the complainant has good reason to believe and does  
7 believe that the violation occurred. If the complaint is based on  
8 information and belief, the complaint shall state the source and  
9 basis of the information and belief. The complainant may swear to  
10 the facts by oath before a notary public or other authorized  
11 official.

12 (d) The complaint must state on its face an allegation that,  
13 if true, constitutes a violation of the ethics code.

14 Sec. 161.156. PROCESSING OF COMPLAINT. (a) The commission  
15 shall determine whether a sworn complaint filed with the commission  
16 complies with the form requirements of Section 161.155.

17 (b) Not later than the 10th business day after the date a  
18 complaint is filed, the commission shall send written notice to the  
19 complainant and the respondent. The notice must state whether the  
20 complaint complies with the form requirements of Section 161.155  
21 and include the information required by Section 161.158(d).

22 (c) If the commission determines that the complaint does not  
23 comply with the form requirements, the commission shall send the  
24 complaint to the complainant with the written notice, a statement  
25 explaining how the complaint fails to comply, and a copy of the  
26 rules for filing sworn complaints. The complainant may resubmit  
27 the complaint not later than the 21st day after the date the notice

1 under Subsection (b) is mailed. If the commission determines that  
2 the complaint is not resubmitted within the 21-day period, the  
3 commission shall:

4 (1) dismiss the complaint; and

5 (2) not later than the 10th business day after the date  
6 of the dismissal, send written notice to the complainant and the  
7 respondent of the dismissal and the grounds for dismissal.

8 (d) If the commission determines that a complaint is  
9 resubmitted under Subsection (c) within the 21-day period but is  
10 not in proper form, the commission shall send the notice required  
11 under Subsection (c), and the complainant may resubmit the  
12 complaint under that subsection.

13 (e) If the commission determines that a complaint returned  
14 to the complainant under Subsection (c) or (d) is resubmitted  
15 within the 21-day period and that the complaint complies with the  
16 form requirements, the commission shall send the written notice  
17 under Subsection (b).

18 Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE  
19 REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) The county may  
20 not suspend or terminate the employment of or take other adverse  
21 action against a county employee who in good faith files a complaint  
22 or otherwise reports to the ethics commission, commission staff, or  
23 another law enforcement authority a violation of the ethics code by  
24 a person subject to the ethics code.

25 (b) The county may not suspend or terminate the employment  
26 of or take other adverse action against a county employee who in  
27 good faith participates in the complaint processing, preliminary

1 review, hearing, or any other aspect of the investigation and  
2 resolution by the commission of an alleged violation of the ethics  
3 code by a person subject to the ethics code.

4 (c) A commission created by a county under this chapter is a  
5 part of the "local governmental entity" for purposes of Section  
6 554.002, Government Code.

7 (d) An ethics code adopted by a commission pursuant to this  
8 chapter is a "law" as defined by Section 554.001, Government Code.

9 Sec. 161.158. PRELIMINARY REVIEW: INITIATION. (a) The  
10 commission staff shall promptly conduct a preliminary review on  
11 receipt of a written complaint that is in compliance with the form  
12 requirements of Section 161.155.

13 (b) On a motion adopted by an affirmative vote of at least  
14 six commission members, the commission may initiate a preliminary  
15 review of the matter that is the subject of the motion without a  
16 sworn complaint.

17 (c) The commission shall determine in writing whether the  
18 commission has jurisdiction over the violation of the ethics code  
19 provision alleged in a sworn complaint processed under Section  
20 161.156.

21 (d) If the commission determines that it has jurisdiction,  
22 it shall issue a notice under Section 161.156(b) that must include:

23 (1) a statement that the commission has jurisdiction  
24 over the violation alleged in the complaint;

25 (2) a statement of whether the complaint will be  
26 processed as a Category One violation or a Category Two violation,  
27 subject to reconsideration as provided for by Section 161.154;



1           (3) the date by which the respondent is required to  
2 respond to the notice;

3           (4) a copy of the complaint and the rules of procedure  
4 of the commission;

5           (5) a statement of the rights of the respondent;

6           (6) a statement inviting the respondent to provide to  
7 the commission any information relevant to the complaint; and

8           (7) a statement that a failure to timely respond to the  
9 notice will be treated as a separate violation.

10          (e) If the commission determines that the commission does  
11 not have jurisdiction over the violation alleged in the complaint,  
12 the commission shall:

13           (1) dismiss the complaint; and

14           (2) not later than the 10th business day after the date  
15 of the dismissal, send to the complainant and the respondent  
16 written notice of the dismissal and the grounds for the dismissal.

17          Sec. 161.159. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT.

18          (a) If the alleged violation is a Category One violation:

19           (1) the respondent must respond to the notice required  
20 by Section 161.156(b) not later than the 10th business day after the  
21 date the respondent receives the notice; and

22           (2) if the matter is not resolved by agreement between  
23 the commission and the respondent before the 30th business day  
24 after the date the respondent receives the notice under Section  
25 161.156(b), the commission shall set the matter for a preliminary  
26 review hearing to be held at the next commission meeting for which  
27 notice has not yet been posted.

1       (b) If the alleged violation is a Category Two violation:

2               (1) the respondent must respond to the notice required  
3 by Section 161.156(b) not later than the 25th business day after the  
4 date the respondent receives the notice under Section 161.156(b);  
5 and

6               (2) if the matter is not resolved by agreement between  
7 the commission and the respondent before the 75th business day  
8 after the date the respondent receives the notice under Section  
9 161.156(b), the commission shall set the matter for a preliminary  
10 review hearing to be held at the next commission meeting for which  
11 notice has not yet been posted.

12       (c) A respondent's failure to timely respond as required by  
13 Subsection (a)(1) or (b)(1) is a Category One violation.

14       (d) The response required by Subsection (a) or (b) must  
15 include any challenge the respondent seeks to raise to the  
16 commission's exercise of jurisdiction. In addition, the respondent  
17 may:

18               (1) acknowledge the occurrence or commission of a  
19 violation;

20               (2) deny the allegations contained in the complaint  
21 and provide evidence supporting the denial; or

22               (3) agree to enter into an assurance of voluntary  
23 compliance or other agreed order, which may include an agreement to  
24 immediately cease and desist.

25       (e) If the commission sets the matter for a preliminary  
26 review hearing, the commission shall promptly send to the  
27 complainant and the respondent written notice of the date, time,

1 and place of the preliminary review hearing.

2 Sec. 161.160. PRELIMINARY REVIEW: WRITTEN QUESTIONS.

3 During a preliminary review, the commission staff may submit to the  
4 complainant or respondent written questions reasonably intended to  
5 lead to the discovery of matters relevant to the investigation.

6 Sec. 161.161. PRELIMINARY REVIEW AND PRELIMINARY REVIEW  
7 PROCEDURES. The commission shall adopt procedures for the conduct  
8 of preliminary reviews and preliminary review hearings. The  
9 procedures must include:

10 (1) a reasonable time for responding to questions  
11 submitted by the commission and commission staff and subpoenas  
12 issued by the commission; and

13 (2) the tolling or extension of otherwise applicable  
14 deadlines where:

15 (A) the commission issues a subpoena and the  
16 commission's meeting schedule makes it impossible both to provide a  
17 reasonable time for response and to comply with the otherwise  
18 applicable deadlines; or

19 (B) the commission determines that, despite the  
20 commission staff's diligence and the reasonable cooperation of the  
21 respondent, a matter is too complex to resolve within the otherwise  
22 applicable deadlines without compromising either the commission  
23 staff's investigation or the rights of the respondent.

24 Sec. 161.162. PRELIMINARY REVIEW HEARING: PROCEDURE.

25 (a) The commission shall conduct a preliminary review hearing if:

26 (1) following the preliminary review, the commission  
27 and the respondent cannot agree to the disposition of the complaint

1 or motion; or

2 (2) the respondent in writing requests a hearing.

3 (b) The commission shall provide written notice to the  
4 complainant, if any, and the respondent of the date, time, and place  
5 the commission will conduct the preliminary review hearing.

6 (c) At or after the time the commission provides notice of a  
7 preliminary review hearing, the commission may submit to the  
8 complainant and the respondent written questions and require those  
9 questions to be answered under oath within a reasonable time.

10 (d) During a preliminary review hearing, the commission:

11 (1) may consider all submitted evidence related to the  
12 complaint or to the subject matter of a motion under Section  
13 161.158(b);

14 (2) may review any documents or material related to  
15 the complaint or to the motion; and

16 (3) shall determine whether there is credible evidence  
17 that provides cause for the commission to conclude that a violation  
18 within the jurisdiction of the commission has occurred.

19 (e) During a preliminary review hearing, the respondent may  
20 appear before the commission with the assistance of counsel, if  
21 desired by the respondent, and present any relevant evidence,  
22 including a written statement.

23 Sec. 161.163. PRELIMINARY REVIEW HEARING: RESOLUTION.

24 (a) As soon as practicable after the completion of a preliminary  
25 review hearing, the commission by vote shall issue a decision  
26 stating:

27 (1) whether there is credible evidence for the

1 commission to determine that a violation within the jurisdiction of  
2 the commission has occurred and whether the violation is technical  
3 or de minimis; or

4 (2) that there is insufficient evidence for the  
5 commission to determine whether a violation within the jurisdiction  
6 of the commission has occurred.

7 (b) If the commission determines that there is credible  
8 evidence for the commission to determine that a violation has  
9 occurred, the commission shall resolve and settle the complaint or  
10 motion to the extent possible. If the commission successfully  
11 resolves and settles the complaint or motion, not later than the  
12 10th business day after the date of the final resolution of the  
13 complaint or motion, the commission shall send to the complainant,  
14 if any, and the respondent a copy of the decision stating the  
15 commission's determination and written notice of the resolution and  
16 the terms of the resolution. If the commission is unsuccessful in  
17 resolving and settling the complaint or motion, the commission  
18 shall:

19 (1) order a formal hearing to be held in accordance  
20 with Sections 161.164-161.167; and

21 (2) not later than the 10th business day after the date  
22 of the decision, send to the complainant, if any, and the  
23 respondent:

24 (A) a copy of the decision;

25 (B) written notice of the date, time, and place  
26 of the formal hearing;

27 (C) a statement of the nature of the alleged

1 violation;

2 (D) a description of the evidence of the alleged

3 violation;

4 (E) a copy of the complaint or motion;

5 (F) a copy of the commission's rules of  
6 procedure; and

7 (G) a statement of the rights of the respondent.

8 (c) If the commission determines that there is credible  
9 evidence for the commission to determine that a violation within  
10 the jurisdiction of the commission has not occurred, the commission  
11 shall:

12 (1) dismiss the complaint or motion; and

13 (2) not later than the fifth business day after the  
14 date of the dismissal, send to the complainant, if any, and the  
15 respondent a copy of the decision stating the commission's  
16 determination and written notice of the dismissal and the grounds  
17 for dismissal.

18 (d) If the commission determines that there is insufficient  
19 credible evidence for the commission to determine that a violation  
20 within the jurisdiction of the commission has occurred, the  
21 commission may dismiss the complaint or motion or promptly conduct  
22 a formal hearing under Sections 161.164-161.167. Not later than  
23 the fifth business day after the date of the commission's  
24 determination under this subsection, the commission shall send to  
25 the complainant, if any, and the respondent a copy of the decision  
26 stating the commission's determination and written notice of the  
27 grounds for the determination.

1 Sec. 161.164. FORMAL HEARING: STANDARD OF EVIDENCE.

2 During a formal hearing, the commission shall determine by a  
3 preponderance of the evidence whether a violation within the  
4 jurisdiction of the commission has occurred.

5 Sec. 161.165. FORMAL HEARING: SUBPOENAS AND WITNESSES.

6 (a) A subpoena or other request to testify shall be served  
7 sufficiently in advance of the scheduled appearance at a formal  
8 hearing to allow a reasonable period, as determined by the  
9 commission, for the person subpoenaed to prepare for the hearing  
10 and to employ counsel if desired.

11 (b) Except as provided by Section 161.166(a)(1), the  
12 commission may order that a person may not, except as specifically  
13 authorized by the presiding officer, make public the name of a  
14 witness subpoenaed by the commission before the date of that  
15 witness's scheduled appearance.

16 (c) A witness may read a written statement or present a  
17 brief oral opening statement at a formal hearing.

18 (d) A person whose name is mentioned or who is identified or  
19 referred to in testimony or in statements made by a commission  
20 member, commission staff member, or witness and who reasonably  
21 believes that the statement tends to adversely affect the person's  
22 reputation may:

23 (1) request to appear personally before the commission  
24 to testify in the person's own behalf; or

25 (2) file a sworn statement of facts relevant to the  
26 testimony or statement that the person believes adversely affects  
27 the person's reputation.

1 (e) A witness who testifies at a formal hearing must be  
2 sworn.

3 Sec. 161.166. FORMAL HEARING: PROCEDURE. (a) Not later  
4 than the fifth business day before the date of a scheduled formal  
5 hearing or on the granting of a motion for discovery by the  
6 respondent, the commission shall provide to the complainant, if  
7 any, and to the respondent:

8 (1) a list of proposed witnesses to be called at the  
9 hearing;

10 (2) copies of all documents expected to be introduced  
11 as exhibits at the hearing; and

12 (3) a brief statement as to the nature of the testimony  
13 expected to be given by each witness to be called at the hearing.

14 (b) The respondent may not be compelled to give evidence or  
15 testimony that violates the respondent's right against  
16 self-incrimination under the United States Constitution or the  
17 Texas Constitution.

18 (c) The commission shall adopt rules governing discovery,  
19 hearings, and related procedures consistent with this chapter and  
20 Chapter 2001, Government Code.

21 Sec. 161.167. FORMAL HEARING: RESOLUTION. (a) Not later  
22 than the 30th business day after the date of the formal hearing, the  
23 commission shall convene a meeting and by motion shall issue:

24 (1) a final decision stating the resolution of the  
25 formal hearing; and

26 (2) a written report stating the commission's findings  
27 of fact, conclusions of law, and recommendation of criminal



1 referral or imposition of a civil penalty, if any.

2 (b) Six members of the commission are required for a quorum  
3 at a formal hearing.

4 (c) Not later than the 10th business day after the date the  
5 commission issues the final decision and written report, the  
6 commission shall:

7 (1) send a copy of the decision and report to the  
8 complainant, if any, and to the respondent; and

9 (2) make a copy of the decision and report available to  
10 the public during reasonable business hours.

11 Sec. 161.168. STATUS OF COMPLAINT. (a) The commission  
12 shall keep an information file about each sworn or other complaint  
13 filed with the commission. The file must include:

14 (1) the name of the person who filed the complaint;

15 (2) the date the complaint is received by the  
16 commission;

17 (3) the subject matter of the complaint;

18 (4) the name of each person contacted in relation to  
19 the complaint;

20 (5) a summary of the results of the review or  
21 investigation of the complaint; and

22 (6) an explanation of the reason the file was closed,  
23 if the commission closed the file without taking action other than  
24 to investigate the complaint.

25 (b) The commission shall provide to the person filing the  
26 complaint and to each person who is a subject of the complaint a  
27 copy of the commission's policies and procedures relating to

1 complaint investigation and resolution.

2 (c) In addition to the notice required by Sections 161.156  
3 and 161.167, the commission, at least quarterly until final  
4 disposition of a complaint, shall notify the person who filed the  
5 complaint and each person who is a subject of the complaint, if any,  
6 of the status of the sworn or other complaint.

7 (d) The commission shall resolve a complaint within six  
8 months of its receipt unless it makes a determination that  
9 additional time is required to resolve the matter. On a  
10 determination that additional time is required, the commission may  
11 extend the investigation in three-month increments. Each extension  
12 requires separate approval by the commission.

13 (e) If the commission does not resolve the matter within six  
14 months or within an authorized extension, the complaint shall be  
15 deemed to have been dismissed without prejudice.

16 Sec. 161.169. EXTENSION OF DEADLINE. The commission may,  
17 on its own motion or on the reasonable request of a respondent,  
18 extend any deadline for action relating to a sworn complaint,  
19 motion, preliminary review hearing, or formal hearing.

20 Sec. 161.170. SUBPOENA. (a) In connection with a formal  
21 hearing, the commission, as authorized by this chapter, may  
22 subpoena and examine witnesses and documents that directly relate  
23 to a sworn complaint.

24 (b) In connection with a preliminary review, the  
25 commission, for good cause and as authorized by this chapter, may  
26 subpoena documents and witnesses on application by the commission  
27 staff and a motion adopted by a vote of at least five members of the

1 commission, for the purpose of attempting to obtain from the  
2 documents or witnesses specifically identified information, if the  
3 commission reasonably believes that the specifically identified  
4 information:

5 (1) is likely to be determinative as to whether the  
6 subject of an investigation has violated a provision of the ethics  
7 code;

8 (2) can be determined from the documents or is known by  
9 the witnesses; and

10 (3) is not reasonably available through a less  
11 intrusive means.

12 (c) The commission shall adopt procedures for the issuance  
13 of subpoenas under this section.

14 (d) A copy of a subpoena issued under this section must be  
15 delivered to the respondent.

16 (e) At the written request of at least five members of the  
17 commission, a peace officer shall serve a subpoena of the  
18 commission in the manner prescribed for service of a district court  
19 subpoena.

20 (f) If a person to whom a subpoena is directed refuses to  
21 appear, refuses to answer inquiries, or fails or refuses to produce  
22 books, records, or other documents that were under the person's  
23 control when the demand was made, the commission shall report that  
24 fact to a district court in the county. The district court shall  
25 enforce the subpoena by attachment proceedings for contempt in the  
26 same manner as the court enforces a subpoena issued by the court.

27 (g) A respondent has the right to quash a subpoena as

1 provided by law.

2 (h) A subpoenaed witness who attends a commission hearing is  
3 entitled to the same mileage and per diem payments as a witness who  
4 appears before a grand jury. A person who provides subpoenaed  
5 documents to the commission is entitled to reimbursement from the  
6 commission for the person's reasonable cost of producing the  
7 documents.

8 Sec. 161.171. STATUS OF COMPLAINANT. The complainant is  
9 not a party to a preliminary review, preliminary review hearing, or  
10 formal hearing under this subchapter.

11 Sec. 161.172. APPLICABILITY OF OTHER ACTS. (a) Except as  
12 provided by Section 161.173(b), Chapter 552, Government Code, does  
13 not apply to documents or any additional evidence relating to the  
14 processing, preliminary review, preliminary review hearing, or  
15 resolution of a sworn complaint or motion.

16 (b) Chapter 551, Government Code, does not apply to the  
17 processing, preliminary review, preliminary review hearing, or  
18 resolution of a sworn complaint or motion, but does apply to a  
19 formal hearing held under Sections 161.164-161.167.

20 (c) Subchapters C-H, Chapter 2001, Government Code, apply  
21 only to a formal hearing under this subchapter, the resolution of a  
22 formal hearing, and the appeal of a final order of the commission,  
23 and only to the extent consistent with this chapter.

24 Sec. 161.173. CONFIDENTIALITY; OFFENSE. (a) Except as  
25 provided by Subsection (b) or (c) or by Section 161.201,  
26 proceedings at a preliminary review hearing performed by the  
27 commission, a sworn complaint, and documents and any additional

1 evidence relating to the processing, preliminary review,  
2 preliminary review hearing, or resolution of a sworn complaint or  
3 motion are confidential and may not be disclosed unless entered  
4 into the record of a formal hearing or a judicial proceeding, except  
5 that a document or statement that was previously public information  
6 remains public information.

7 (b) An order issued by the commission after the completion  
8 of a preliminary review or hearing determining that a violation  
9 other than a technical or de minimis violation has occurred is not  
10 confidential.

11 (c) Commission staff may, for the purpose of investigating a  
12 sworn complaint or motion, disclose to the complainant, the  
13 respondent, or a witness information that is otherwise confidential  
14 and relates to the sworn complaint if:

15 (1) the employee makes a good faith determination that  
16 the disclosure is necessary to conduct the investigation;

17 (2) the employee's determination under Subdivision (1)  
18 is objectively reasonable;

19 (3) the commission specifically authorizes the  
20 disclosure; and

21 (4) the employee discloses only the information  
22 necessary to conduct the investigation.

23 (d) A person commits an offense if the person intentionally:

24 (1) destroys, mutilates, or alters information  
25 obtained under this chapter; or

26 (2) removes information obtained under this chapter  
27 without permission as provided by this chapter.

1       (e) An offense under Subsection (d) is a misdemeanor  
2 punishable by:

3           (1) a fine of not less than \$25 or more than \$4,000;

4           (2) confinement in the county jail for not less than  
5 three days or more than three months; or

6           (3) both the fine and confinement.

7       (f) A person commits an offense if the person distributes  
8 information considered confidential under the terms of this  
9 chapter.

10       (g) A person who obtains access to confidential information  
11 under this chapter commits an offense if that person knowingly:

12           (1) uses the confidential information for a purpose  
13 other than the purpose for which the information was received or for  
14 a purpose unrelated to this chapter, including solicitation of  
15 political contributions or solicitation of clients;

16           (2) permits inspection of the confidential  
17 information by a person who is not authorized to inspect the  
18 information; or

19           (3) discloses the confidential information to a person  
20 who is not authorized to receive the information.

21       (h) An offense under Subsection (f) or (g) is a misdemeanor  
22 punishable by:

23           (1) a fine of not more than \$1,000;

24           (2) confinement in the county jail for not more than  
25 six months; or

26           (3) both the fine and confinement.

27       (i) A violation under this section constitutes official

1 misconduct.

2 (j) In addition to other penalties, the respondent may  
3 commence a civil action for damages on the respondent's own behalf  
4 against any person who is alleged to have disclosed information  
5 made confidential by this subchapter. Any action under this  
6 chapter must be brought in a district court in the county. The  
7 court may award costs and attorney's fees.

8 (k) A county employee is subject to discipline, including  
9 termination of employment, for disclosing confidential information  
10 under this chapter.

11 (l) A county employee who discloses confidential  
12 information in compliance with Subsection (c) is not subject to  
13 Subsections (d)-(k).

14 Sec. 161.174. AVAILABILITY OF COMMISSION ORDERS ON  
15 INTERNET. (a) As soon as practicable following a preliminary  
16 review, preliminary review hearing, or formal hearing at which the  
17 commission determines that a person has committed a violation  
18 within the commission's jurisdiction, the commission shall make  
19 available on the Internet:

20 (1) a copy of the commission's order stating the  
21 determination; or

22 (2) a summary of the commission's order.

23 (b) This section does not apply to a determination of a  
24 violation that is technical or de minimis.

25 [Sections 161.175-161.200 reserved for expansion]

26 SUBCHAPTER E. ENFORCEMENT

27 Sec. 161.201. INITIATION AND REFERRAL. (a) On a motion

1 adopted by an affirmative vote of at least six commission members,  
2 the commission may initiate civil enforcement actions and refer  
3 matters to the appropriate prosecuting attorney for criminal  
4 prosecution.

5 (b) On receipt of a sworn complaint, if the commission  
6 reasonably believes that the person who is the subject of the  
7 complaint has violated Chapter 36, 37, or 39, Penal Code, the  
8 commission may refer the matter to the appropriate prosecuting  
9 attorney for criminal prosecution.

10 (c) In making a referral to a prosecuting attorney under  
11 this section, the commission may disclose confidential  
12 information.

13 Sec. 161.202. ORDER. The commission may:

14 (1) issue and enforce a cease and desist order to stop  
15 a violation;

16 (2) issue an affirmative order to require compliance  
17 with the laws administered and enforced by the commission; and

18 (3) issue an order of public censure with or without  
19 penalty as provided pursuant to Section 161.203.

20 Sec. 161.203. CIVIL PENALTY FOR DELAY OR VIOLATION.

21 (a) The commission may impose a civil penalty of not more than \$500  
22 for each delay in complying with a commission order.

23 (b) The commission may impose a civil penalty of not more  
24 than \$4,000 for a violation of the ethics code adopted by the  
25 commission.

26 (c) A penalty paid under this section shall be deposited to  
27 the credit of the general fund of the county.



1 (d) This section is cumulative of any other available  
2 sanctions under this chapter.

3 Sec. 161.204. WAIVER OR REDUCTION OF PENALTY. (a) A  
4 person may request the waiver or reduction of a civil penalty by  
5 submitting an affidavit to the commission that states the filer's  
6 reasons for requesting a waiver or reduction.

7 (b) The commission may waive or reduce a civil penalty if  
8 the commission finds that a waiver or reduction is in the public  
9 interest and in the interest of justice. The commission shall  
10 consider the following before acting to waive or reduce a civil  
11 penalty:

12 (1) the facts and circumstances supporting the  
13 person's request for a waiver or reduction;

14 (2) the seriousness of the violation, including the  
15 nature, circumstances, consequences, extent, and gravity of the  
16 violation, and the amount of the penalty;

17 (3) any history of previous violations by the person;

18 (4) the demonstrated good faith of the person,  
19 including actions taken to rectify the consequences of the  
20 violation;

21 (5) the penalty necessary to deter future violations;

22 and

23 (6) any other matter that justice may require.

24 (c) After hearing the waiver request, the commission may  
25 affirm, reduce, or waive the civil penalty.

26 Sec. 161.205. NOTIFICATION OF REGULATORY OR SUPERVISORY  
27 ENTITY. The commission may notify the appropriate regulatory or

1 supervisory entity, including any agency, the State Commission on  
2 Judicial Conduct, or the State Bar of Texas, of a violation of the  
3 ethics code adopted by the commission.

4 Sec. 161.206. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH  
5 COMPLAINT. (a) The commission may impose a civil penalty of not  
6 more than \$4,000 for the filing of a frivolous or bad-faith  
7 complaint. In this subsection, "frivolous complaint" means a  
8 complaint that is groundless and brought in bad faith or is  
9 groundless and brought for the purpose of harassment.

10 (b) In addition to other penalties, the respondent may  
11 commence a civil action on the respondent's own behalf against any  
12 person who filed a frivolous complaint against the respondent. Any  
13 action under this chapter shall be brought in a district court in  
14 the county. The court may award costs and attorney's fees.

15 (c) A person may file a sworn complaint with the commission,  
16 in accordance with Section 161.155, alleging that a complaint  
17 relating to that person filed with the commission is frivolous or  
18 brought in bad faith. A complaint may be filed under this  
19 subsection without regard to whether the complaint alleged to be  
20 frivolous or brought in bad faith is pending before the commission  
21 or has been resolved. The commission shall act on a complaint made  
22 under this subsection as provided by Subchapter D.

23 Sec. 161.207. FACTORS CONSIDERED FOR ASSESSMENT OF  
24 SANCTION. The commission shall consider the following factors in  
25 assessing a sanction:

26 (1) the seriousness of the violation, including the  
27 nature, circumstances, consequences, extent, and gravity of the

1 violation;

2 (2) the history and extent of previous violations;

3 (3) the demonstrated good faith of the violator,  
4 including actions taken to rectify the consequences of the  
5 violation;

6 (4) the penalty necessary to deter future violations;

7 and

8 (5) any other matters that justice may require.

9 Sec. 161.208. APPEALS. (a) A respondent may appeal the  
10 decision by filing a petition in a district court in the county  
11 within 30 days after the date of the decision.

12 (b) An appeal under this section is under the substantial  
13 evidence rule, and the judgment of the district court is appealable  
14 as in other civil cases.

15 (c) If the district court renders judgment for the  
16 petitioner, and the petitioner is a county employee, the court may  
17 order reinstatement of the county employee, payment of back pay, or  
18 other appropriate relief.

19 (d) If the district court renders judgment for the  
20 petitioner, the court may order appropriate relief, including costs  
21 and attorney's fees.

22 Sec. 161.209. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. In  
23 an appeal under Section 161.208, the district court may not  
24 substitute its judgment for the judgment of the commission on the  
25 weight of the evidence on questions committed to the commission's  
26 discretion but:

27 (1) may affirm the commission's decision in whole or in

1 part; and

2 (2) shall reverse or remand the case for further  
3 proceedings if substantial rights of the petitioner have been  
4 prejudiced because the commission's findings, inferences,  
5 conclusions, or decisions are:

6 (A) in violation of a constitutional or statutory  
7 provision;

8 (B) in excess of the commission's authority;

9 (C) made through unlawful procedure;

10 (D) affected by other error of law;

11 (E) not reasonably supported by substantial  
12 evidence considering the reliable and probative evidence in the  
13 record as a whole; or

14 (F) arbitrary or capricious, characterized by  
15 abuse of discretion, or clearly an unwarranted exercise of  
16 discretion.

17 Sec. 161.210. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL  
18 EVIDENCE RULE. (a) After service of the petition on the  
19 commission and within the time permitted for filing an answer or  
20 within additional time allowed by the court, the commission shall  
21 send to the reviewing court the original or a certified copy of the  
22 entire record of the proceeding under review. The record shall be  
23 filed with the clerk of the court. The record may be shortened by  
24 stipulation of all parties to the review proceedings. The court may  
25 assess additional costs against a party who unreasonably refuses to  
26 stipulate to limit the record, unless the party pays all costs of  
27 record preparation. The court may require or permit later

1 corrections or additions to the record.

2 (b) A party may apply to the court to present additional  
3 evidence. If the court is satisfied that the additional evidence is  
4 material and that there were good reasons for the failure to present  
5 it in the proceeding before the commission, the court may order that  
6 the additional evidence be taken before the commission on  
7 conditions determined by the court. The commission may change its  
8 findings and decisions by reason of the additional evidence and  
9 shall file the additional evidence and any changes, new findings,  
10 or decisions with the reviewing court.

11 (c) The party seeking judicial review shall offer, and the  
12 reviewing court shall admit, the commission record into evidence as  
13 an exhibit.

14 (d) The court shall conduct the review sitting without a  
15 jury and is confined to the commission record, except that the court  
16 may receive evidence of procedural irregularities alleged to have  
17 occurred before the commission that are not reflected in the  
18 record.

19 Sec. 161.211. COST OF PREPARING COMMISSION RECORD.

20 (a) The commission may require a party who appeals a final  
21 decision under Section 161.208 to pay one-half of the cost of  
22 preparation of the original or a certified copy of the record of the  
23 commission proceeding that is required to be sent to the reviewing  
24 court.

25 (b) A charge imposed under this section is a court cost and  
26 may be assessed by the court in accordance with the Texas Rules of  
27 Civil Procedure.

1 Sec. 161.212. CRIMINAL PENALTY. (a) A county public  
2 servant or county affiliate commits an offense under this chapter  
3 if the person knowingly violates a provision of the ethics code  
4 adopted by the commission.

5 (b) An offense under this chapter is a misdemeanor  
6 punishable by a fine of not less than \$25 and not more than \$4,000.

7 (c) This section is cumulative of any other available  
8 sanctions under this chapter.

9 Sec. 161.213. VENUE. An offense under this subchapter,  
10 including perjury, may be prosecuted in any county in which it may  
11 be prosecuted under the Code of Criminal Procedure.

12 [Sections 161.214-161.300 reserved for expansion]

13 SUBCHAPTER F. DISSOLUTION OF COMMISSION

14 Sec. 161.301. PETITION FOR DISSOLUTION OF COMMISSION. If,  
15 after an ethics commission created pursuant to Section 161.052 has  
16 been in effect for at least one year, 10 percent of the qualified  
17 voters of the county petition the commissioners court to dissolve  
18 the commission, the commissioners court shall call an election to  
19 determine whether the commission will be dissolved.

20 Sec. 161.302. DISSOLUTION ELECTION. (a) An election under  
21 this subchapter must be held in the manner provided for an election  
22 to create a county ethics commission.

23 (b) The ballot for the election shall be printed to provide  
24 for voting for or against the proposition: "Dissolution of the  
25 county ethics commission."

26 Sec. 161.303. DISSOLUTION OF COMMISSION. If the  
27 proposition is approved by a majority of the qualified voters

1 voting at the election, the commissioners court shall declare the  
2 result and by order dissolve the ethics commission. A copy of the  
3 order dissolving the commission shall be placed in the minutes of  
4 the court's proceedings.

5 Sec. 161.304. SAVING PROVISIONS. The dissolution of a  
6 county ethics commission under this subchapter does not affect:

7 (1) the prior operation of the ethics code adopted by  
8 the commission or any prior action taken under it;

9 (2) any violation of the ethics code or any penalty,  
10 forfeiture, or punishment incurred for a violation of the ethics  
11 code before the effective date of the dissolution; or

12 (3) any investigation, proceeding, or remedy  
13 concerning any penalty, forfeiture, or punishment, and the  
14 investigation, proceeding, or remedy may be instituted, continued,  
15 or enforced, and the penalty, forfeiture, or punishment imposed, as  
16 if the commission had not been dissolved.

17 SECTION 2. This Act takes effect September 1, 2009.